



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/160836

PRELIMINARY RECITALS

Pursuant to a petition filed September 25, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on October 21, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether Milwaukee Enrollment Services (the agency) correctly determined that the Petitioner is ineligible for Foodshare benefits.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Pang Thao-Xiong, Income Maintenance Specialist Advanced
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On September 23, 2014, the Petitioner completed an on-line ACCESS application for Foodshare benefits. (Exhibit 3, pgs. 11-25)

3. In that application, the Petitioner indicated that he was enrolled in a college, university or vocational school and that he did not have any income of any kind. (Id.)
4. Petitioner is enrolled at the University of [REDACTED] and though eligible to participate in the Federal Work Study program, he is not doing so, because funding has run out. (Exhibit 2)
5. On September 26, 2014, the agency sent the Petitioner a notice indicating that his application for benefits was denied because a) he was not unable to work, b) he was not a in work placement or work study program, c) he was not getting W-2 or TANF funds, d) he was not working at least 20 hours per week, and d) he was not taking care of a child under age 6 or 12. (Exhibit 3, pgs. 26-29)
6. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on September 25, 2014. (Exhibit 1)

DISCUSSION

The general rule is that students who are enrolled at least halftime in an institution of higher education are not eligible for FoodShare benefits. *FoodShare Wisconsin Handbook (FSH) §3.15.1*

There are, however, exceptions to the rule. A student can be eligible for FoodShare benefits if s/he meets one of the following criteria.

1. Employed at least 20 hours a week with earnings equal to at least the federal minimum wage. (7.25*20=\$145 per week)
2. Self-employed at least 20 hours a week with self-employment earnings (after SE expenses are subtracted) equivalent to at least the federal minimum wage for 20 hours a week (\$7.25 x 20 = \$145 a week).
3. Employed and self-employed for a combined maximum of at least 20 hours a week and earning at least the federal minimum wage for 20 hours a week (\$7.25 x 20 = \$145 a week). Earnings are based on self-employment income (after SE expenses are subtracted) plus gross income from other employment.
4. Participating in a federal or state work study program.
 - a. Continue the exemption until the end of the month in which the school term ends, or the student refuses to do his assigned work. A student who has stopped working during the school year because the work study funding has run out would continue to be classified as an eligible student until the end of the school term.
 - b. The exemption does not cover school breaks of longer than one month, unless the student is participating in work study during the break.
5. Responsible for the care of a dependent household member under age 6. If 2 people exercising parental control are in the food unit, allow student status to only 1 person per child.
6. Responsible for the care of a dependent household member who has reached age 6 but is under age 12 if the agency determines adequate child care is unavailable. If 2 people exercising parental control are in the food unit, allow student status to only 1 person per child.
7. Is a single parent enrolled in an institution of higher education on a full-time basis (as determined by the institution) and is exercising care and control of a dependent food unit member under the age of 12. To apply this provision there must be only one biological or adoptive parent, or step-parent in the same food unit as the child. If there is no biological or adoptive parent or step-parent living with the child, another full-time student living with the child may qualify as an eligible student under this provision if the student has parental control of the child and does not live with his or her spouse
8. Receiving a Tribal TANF (Temporary Assistance for Needy Families) cash payment, W-2 cash payment, or working in a W-2 Trial Job. Assigned to or placed in an institution of higher learning by WIA (Workforce Investment Act).
9. Enrolled in a W-2 employment position or other TANF funded program under Title IV of the Social Security Act.

10. Physically or mentally unfit for gainful employment. Verify the claim, if it's not clear. Receipt of temporary or permanent disability benefits, a statement from a physician, or certified psychologist is appropriate verification.
11. Participating in an on-the-job training program. This exemption applies only during the period of time the person is being trained by the employer.
12. Is assigned to or placed in an institution of higher education through or in compliance with the requirements of FSET (FoodShare Employment and Training)
13. Is enrolled in an educational program that is designed to be completed in 2 years or less and obtaining certification or a diploma from the program will lead to employment that is in demand.

FoodShare Wisconsin Handbook (FSH) §3.15.1

It is undisputed that Petitioner does not fall into any of the 13 exceptions listed above. Petitioner's representative argues that he should be found eligible FoodShare benefits because he is eligible for the Federal Work Study program and would be actively participating in it, had funding not run out.

However, exception number 4 requires actual participation in the Work Study program, not merely a finding of eligibility for the program. As such, the agency correctly denied the Petitioner's application for FoodShare benefits.

Petitioner's representative argued that it isn't fair to deny the Petitioner FoodShare benefits, just because another program ran out of funding. This is an equitable argument and Administrative Law Judges do not possess equitable powers, but must instead apply the law as it is written.

Petitioner's representative indicated that Petitioner is currently working 10-12 hours per week. If Petitioner's hours increase to 20 hours per week, and he is earning minimum wage, he can reapply for benefits.

CONCLUSIONS OF LAW

The agency correctly denied Petitioner's application for FoodShare benefits.

THEREFORE, it is

ORDERED

That the Petition is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 28th day of October, 2014.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on October 28, 2014.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability